Supreme Court, U.S.
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No. 05- 39

IN THE
Supreme Court of the United States

GENERAL MOTORS CORPORATION,

Petitioner,

v.

DELMAS FORD, SHIRLEY CARTWRIGHT, BERT CROSSLAND, MARGARET CROSSLAND, Individually And on Behalf of All Others Similarly Situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF OKLAHOMA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Oklahoma Court violated the due process and commerce clauses of the United States Constitution by holding, in order to facilitate certification of a nationwide class action, that one state's law could be applied to the breach of warranty claims of class members residing in all 50 states.

2. Whether the Oklahoma Court violated the due process clause of the United States Constitution by holding that the class notice that would be sent to class members in all 50 states, and which would allow class members to opt out or remain in the litigation, did not need to disclose what state's law would be applied to the claims asserted in the class action.

PARTIES TO THE PROCEEDINGS BELOW

Plaintiffs-Appellees below, and Respondents in this Court, are all identified in the caption of this Petition for Writ of Certiorari. General Motors Corporation, Defendant-Appellant below and Petitioner in this Court, is the sole other party to this suit.

Petitioner, General Motors Corporation, has no parent corporation and no publicly held company owns 10% or more of its stock.

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Cited Authorities

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OTHER AUTHORITIES

Beisner & Miller, *They're Making a Federal Case Out of If. . . In State Court*, 25 Harv. J.L. & Pub. Pol'y 143 22

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